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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES OF AMERICA

CASE NO.

SUPREME COURT OF COLORADO NO. 80SA517
DISTRICT COURT, MONTROSE COUNTY, STATE OF COLORADO, NO. 79CR11

LETTER TO THE COURT AND MOTIONS

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

vs.

RICHARD VELASQUEZ,

Defendant-Appellant.

Appellant is writing this letter to explain to the Court his difficulties in writing the Jurisdictional Statement and getting it mailed. Appellant did write to Hon. Justice Bryon R. White explaining some of these difficulties and requesting a continuance and advice on the precedures involved in filing paper in the Supreme Court of the United States of America.

One difficulty Appellant had is the fact that the Law Library at Shadow Mountain Correctional Facility in Canon City, Colorado, where Appellant is incarcerated, has not updated their library. The most recent Rules Appellant was able to rely on appeared in the 1981 Supplement issued in August of that year in Volume 17 of the Supreme Court Digest "Laywer's Edition". These Rules were Amended effective November 21, 1980. At first Appellant was confused he did not know what the proper method was to challenge the decision of the Supreme Court of Colorado, by Appeal, Certiorari, or Habeas Corpus. The bound Volume stated that Appellant had 90 days to Appeal or Petition For Certiorari while the Supplement stated that the time limit for Appeal is 90 days and 60 days for Certiorari. In the letter to Hon. Justice White Appellant requested a copy of the rules that are most current or advisory counsel and a continuance so that he would have time to properly prepare an Appeal or Petition whichever is proper in this case. This letter was dated May 5, 1982 and was never answered. Appellant also asked the Colorado Supreme Court for advise on this and for an advisory counsel but this was also denied. Appellant also asked other inmates concerning this but none had ever been to the Supreme Court of the United States of America and thus did not know but the ones that had studied law were divided as to whether an Appeal or Petition For Certiorari was proper. All the inmates did state that a Petition For Habeas Corpus was the proper method of appeal from the Supreme Court of Colorado as that is apparently the only method that is performed at this institution. Some did say that their lawyers had told them that a direct appeal to the Supreme Court of the United States of America was possible. Thus after reading the Rules and getting these different opinions Appellant decided to file for Appeal. Appellant also needed more time than 60 days

although he could have filed some sort of paper at that time. Appellant also needed more time due to the fact that he was uncertain when the date of his Petition For Rehearing to the Supreme Court of Colorado was denied. Appellant filed two such Petitions, one dated March 2, 1982 and one March 22, 1982. The first was denied March 15, 1982 and the second was stricken April 21, 1982. Appellant filed the second Petition because he had requested a continuance of the due date for such Petition, which was granted to March 24 1982, but did not receive the decision on this until after he had mailed the first one. Appellant had only received the Opinion of the Court about four days before he mailed the first Petition in and thus did not have sufficient time to prepare a proper Petition but sent one in so that he would not file late should his request for continuance be denied. The request for continuance was based on the fact that Appellant had not received the Opinion of the Court as yet. The continuance was granted and thus Appellant filed the second Petition which was more complete and which was stricken due to the fact that the first one had been denied. Thus Appellant lost this time and did not have enough time to properly prepare this Appeal to this Court. Appellant requests that the time period for this Appeal be considered to begin April 21, 1982 when the second Petition For Rehearing was Stricken rather than March 19, 1982 when the Judgment was entered.

Appellant has also encountered problems concerning getting copies of the Jurisdictional Statement made for the parties to this Appeal and having them mailed. Appellant had the staff at the institution copy part of this Statement while Appellant was preparing the rest of it so that it would be more convient to sort out the copies for mailing when the whole thing was finally finished. The copier is off the grounds and the inmates are required to give them to one of the officers who takes them and gets copies. Inmates are charged 15¢ a page for this to be taken off their accounts. The officers now refuse to make any more copies for Appellant as he is now around $45.00 in the red due to making copies of the Notice of Appeal and copies of the Jurisdictional Statement. They say Appellant cannot make any more copies until this is paid. Appellant was $5.33 in the red when he filed his Motion For Leave to Proceed in Forma Pauperis dated June 7, 1982. Since Appellant was going to court in Montrose, Colorado on the 16th of June he decided to get copies when he went there and send them from there and is the reason they were not sent earlier in the week when the Statement was ready. The Court in Montrose refused to make copies for Appellant also stating they are no longer parties to this. Thus Appellant has changed the date to June 17, 1982. Appellant got Mr. Roushar, an attorney representing Appellant in advisory capacity in Montrose, to make the copies and the Sheriff has agreed to mail them. Thus Appellant requests that they be allowed to be filed late for this reason also should they in fact be late. This last point is also an area Appellant is confused on. Rule 12 only states when a Notice of Appeal must be filed but does not state anything about when the Jurisdictional Statement must be filed and Appellant has not been able to locate the Rule stating the time limits for the Jurisdictional Statement and thus decided to send this one in now.

Appellant has had some difficulty in preparing this Jurisdictional Statement. Appellant has found, upon reviewing it, that he has left out copies of some of the relevant statutes. Since it is ready for mailing and Appellant is not being allowed to make copies or go to the Law Library to get copies of these to include with it at this time Appellant decided to send it anyway since he is uncertain of when it is due. Appellant also could not get anyone to go to the library and do this for him. the missing statutes are Colorado Revised Statutes, 12-22-301; 12-22-308; and Rule 35 of the Colorado Rules of Criminal Procedure. The Federal Statutes are 21 USCA 812 Schedule II and V; 28 USCA 1257. Thus Appellant requests the Court to issue an order stating that the institution is to allow Appellant to make copies of these to send to the Court and to be allowed to make copies of all court papers to be sent to the parties to the proceedings and to the Court and to be allowed to make a copy for himself. They said they must receive a Court Order before they will allow Appellant will be allowed to make any more copies. It is highly unlikely that Appellant will be able to pay for these as he only makes $25 a day at the institution.

Appellant also requests that he receive a copy of the new Rules pertinent to an Appeal to this Court. Appellant also request that Hon. Judge Lincoln and the Clerk of the District Court, Montrose County Courthouse, 300 So. First, Montrose, CO 81401 be stricken as parties to this proceeding as they have stated that they are not so. Appellant has decided not to present a copy of the Jurisdictional Statement to them for this reason but should the Court state otherwise Appellant will give them a copy. Should the Court decide that this Jurisdictional Statement is not in the proper form, Appellant requests that he be granted additional time in which to correct it and possibly have advisory counsel appointed. THANK YOU.

DATED JUNE 17, 1982.

Respectfully Submitted

Richard Velasquez

Richard Velasquez, #01756 Pro, Se
Montrose, Colorado
P.O. Box 700 Unit 4
Canon City, CO 81212

State of Colorado

MAR 8 1982

DAVID W. BREZINA
Court Clerk of the Supreme Court
Seal By [illegible]
Deputy Clerk

SUPREME COURT, STATE OF COLORADO

Case No. 80 SA 517

APPEAL FROM THE DISTRICT COURT, MONTROSE COUNTY, NO. 79CR11

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

vs.

RICHARD VELASQUEZ,

Defendant-Appellant.

Upon consideration of the Letter To The Court and Motions filed on February 24, 1982 and the Motion For Stay Pending Review on Certiorari filed by the Defendant-Appellant herein, and now being sufficiently advised in the premises,

It Is This Day Ordered that the request to reset this matter for oral argument shall be, and the same hereby is, Denied.

It Is Further Ordered that the Request for additional time within which to file a Petition for Rehearing shall be, and the same hereby is, Granted, and said Petition for Rehearing shall be filed on or before March 24, 1982.

It Is Further Ordered that mandate in this matter shall be, and the same hereby is, Stayed pending the filing of a Petition for Rehearing herein.

It Is Further Ordered that the request for appeal bond shall be, and the same hereby is, Denied.

It Is Further Ordered that all other requests as set forth in these pleadings shall be, and the same hereby are, Denied.

BY THE COURT, EN BANC, MARCH 4, 1982

cc: William Morris
Assistant Attorney General

Jeffrey A. Springer
1600 Broadway, #2300
Denver, CO 80202

Richard Velasquez
Box 700-01765-1-E-10
Canon City, CO 81212

Hon. Jerry D. Lincoln, Judge
Montrose County Courthouse
300 So. First
Montrose, CO 81401

Clerk of the District Court
Montrose County Courthouse
300 So. First
Montrose, CO 81401

SUPREME COURT, STATE OF COLORADO

Case No. 80 SA 517

APPEAL FROM THE DISTRICT COURT, MONTROSE COUNTY

THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellee,

vs.

RICHARD VELASQUEZ, Defendant-Appellant.

Upon consideration of the Motion to Reconsider Motion to Proceed In Forma Pauperis filed by the Defendant-Appellant, and now being sufficiently advised in the premises,

It Is This Day Ordered that the Motion to Proceed In Forma Pauperis shall be, and the same hereby is, Granted from this date forward only with no refund for past costs already paid.

BY THE COURT, EN BANC, FEBRUARY 11, 1981

cc: Richard Velasquez
P.O. Box 9
Montrose, CO 81401

Jeffrey A. Springer
1700 Broadway, #2304
Denver, CO 80290

William Morris
Assistant Attorney General

Supreme Court
State of Colorado
Certified to be a full, true and correct copy
FEB 11 1981
DAVID W. BREZINA
Court Clerk of the Supreme Court
Seal By K. Eldridge
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 80 SA 517

"THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellee,	)	
vs.	)	Appeal from the District Court, Montrose County
RICHARD VELASQUEZ, Defendant-Appellant.	)	

Upon consideration of the various handwritten motions filed by the Defendant-Appellant herein on January 9, 1981, and now being sufficiently advised in the premises,

It Is This Day Ordered that the Defendant-Appellant's request to proceed without counsel shall be, and the same hereby is, Granted.

It Is Further Ordered that the Oral Argument presently set for January 16, 1981 at 1:30 P.M. shall be, and the same hereby is, Vacated.

It Is Further Ordered that Oral Argument shall be dispensed with in this matter.

It Is Further Ordered that the Defendant-Appellant herein shall have sixty(60) days or until March 16, 1981 within which to file a handwritten brief in support of appeal points.

It Is Further Ordered that the Plaintiff-Appellee shall have thirty(30) days from the filing of the above-referenced brief to file a reply brief.

It Is Further Ordered that the Defendant-Appellant shall be, and the same hereby is, Granted reasonable use of law books consistent with the security of the Sheriff's Department.

It Is Further Ordered that all other requests of the Defendant-Appellant shall be, and the same hereby are, Denied.

BY THE COURT, EN BANC, JANUARY 15, 1981

cc: Richard Velasquez

William Morris
Assistant Attorney General

Jeffrey A. Springer

Sherriff of Montrose County

Supreme Court
State of Colorado
Certified to be a full, true and correct copy

JAN 19 1981

DAVID W. BREZINA
Clerk of the Supreme Court
By K. Eldridge
Deputy Clerk

Court Seal

Supreme Court
State of Colorado
Certified to be a full, true and correct copy

MAR 17 1981

DAVID W. BREZINA
Court Clerk of the Supreme Court
Seal By K. Eldridge
Deputy Clerk

SUPREME COURT, STATE OF COLORADO

Case No. 80 SA 517

APPEAL FROM THE DISTRICT COURT, MONTROSE COUNTY, NO. 79CR11

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellee,

vs.

RICHARD VELASQUEZ, Defendant-Appellant.

Upon consideration of the Motion for Discovery of Transcripts and Court Records and the Motion for Extension of Time to File Brief, and now being sufficiently advised in the premises,

It Is This Day Ordered that the Motion for Extension of Time to File Brief shall be, and the same hereby is, Granted, and the Brief of the Defendant-Appellant Velasquez shall be filed on or before May 12, 1981.

It Is Further Ordered that the District Court of Montrose County shall release to the Defendant-Appellant Velasquez a copy of the search warrants and affidavits, the motion for new trial, the preliminary hearing transcript, the transcript of the jury selection, and the jury instructions. In all other respects, the Motion for Discovery of Transcripts and Court Records shall be, and the same hereby is, Denied.

It Is Further Ordered that the cost of the transcription of the jury instructions shall be born by the District Court of Montrose County.

It Is Further Ordered that the District Court of Montrose County shall cooperate fully in implementing this order and in supplying the copies of the above pleadings and transcripts on file therein.

BY THE COURT, EN BANC, MARCH 12, 1981

cc: William Morris
Assistant Attorney General

Jeffrey A. Springer
1700 Broadway, #2304
Denver, CO 80290

Richard Velasquez
P.O. Box 9
Montrose, CO 81401

Clerk of the District Court
Montrose County Courthouse
Montrose, CO 81401

DISTRICT COURT, MONTROSE COUNTY, STATE OF COLORADO

ACTION NO. 82 CR 2

AMENDED INFORMATION

PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

vs.

RICHARD VELASQUEZ,

Defendant.

The District Attorney for the Seventh Judicial District of the State of Colorado informs the Court that on or about December 1, 1981, in the County of Montrose, and State of Colorado,

Count I

RICHARD VELASQUEZ did unlawfully and feloniously possess marijuana concentrate (Hashish Oil);

against the peace and dignity of the People of the State of Colorado and in particular in violation of Section 18-18-106, C.R.S. 1973 (as amended) POSSESSION OF MARIJUANA CONCENTRATE (HASHISH OIL) (F-4)

Count II

RICHARD VELASQUEZ did unlawfully and feloniously possess more than one ounce of marijuana;

against the peace and dignity of the People of the State of Colorado and in particular in violation of Section 18-18-106, C.R.S. 1973 (as amended) POSSESSION OF MORE THAN ONE OUNCE OF MARIJUANA (F-4)

Count III

That on April 22, 1974, in the District Court for Boulder County, Twentieth Judicial District, State of Colorado, by and before the Honorable Rex Scott, then and there a Judge of said Court and competent authority in the premises, Richard Velasquez was duly and legally convicted of the crime of POSSESSION OF A NARCOTIC DRUG (COCAINE), in violation of Section 48-5-2, C.R.S. 1963 (as amended) SECOND DRUG CONVICTION (F-4)

Count IV

That on October 10, 1979, in the District Court for Montrose County, Seventh Judicial District, State of Colorado, by and before the Honorable Jerry D. Lincoln, District Judge, then and there a Judge of said Court and competent authority in the premises, Richard Velasquez was duly and legally convicted of the crimes of DISPENCING A DANGEROUR DRUG, POSSESSION OF MORE THAN ONE OUNCE OF CANNIBIS, AND POSSESSION OF A NARCOTIC DRUG, in violation of, respectively, Sections 12-22-404(1)(a), 12-22-404 (1)(1), and 12-22-302, C.R.S. 1973 (as amended). 18-18-106 SECOND DRUG CONVICTION (F-4)

Count V

That on the 22nd day of April, 1974, in the District Court of the State of Colorado, in and for the County of Boulder, by and before the Honorable Rex Scott, then and there a Judge of said Court and a competent authority in the premises, Defendant, Richard Velasquez, was duly and legally convicted of a felony, namely, POSSESSION OF A NARCOTIC DRUG (COCAINE), in violation of Section 48-5-2, C.R.S. 1963 (as amended) of the laws of said State of Colorado, and on the 22nd day of April, 1974, judgment of said conviction was duly entered and on said date said Defendant was duly sentenced to the Colorado State Reformatory, which sentence was duly executed;

against the peace and dignity of the People of the State of Colorado and in particular in violation of Section 16-13-101, C.R.S. 1973 (as amended) HABITUAL CRIMINAL

Count VI

That on the 10th day of October, 1979, in the District Court of the State of Colorado, in and for the County of Montrose, by and before the Honorable Jerry D. Lincoln, then and there a Judge of said Court and a competent authority in the premises, Defendant, Richard Velasquez, was duly and legally convicted of certain felonies, namely, DISPENSING A DANGEROUS DRUG and POSSESSION OF A NARCOTIC DRUG, in violation of, respectively, Sections 12-22-404(1)(a) and 12-22-302, C.R.S. 1973 (as amended), of the laws of said State of Colorado, and on the 10th day of October, 1979, judgment of said conviction was duly entered and on said date said Defendant was duly sentenced to the Colorado State Penitentiary, which sentence was duly executed;

against the peace and dignity of the People of the State of Colorado and in particular in violation of Section 16-13-101, C.R.S. 1973 (as amended) HABITUAL CRIMINAL

/s/
Michael H. Argall, No. 5640
Assistant District Attorney

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct dopy of the foregoing Amended Complaint on Defendant Richard Velasquez, by depositing said copy in the United States Mail, postage prepaid, addressed to: Richard Velasquez, Post Office Box 700-01756, Canon City, Colorado 81212, this 26th day of May, 1982.

/s/

303-861-1111

Richard Velasquez #01756
P.O. Box 700 Unit 3
Canon City, CO 81212

5-5-82

Hon. Bryon R. White
Circuit Justice, Colorado
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Hon. Bryon R. White,

I'm writing you concerning my appeal. I have not filed anything in the Court yet as I am studying the rules for this. I am proceding Pro Se and have never filed a Petition For Certiorari before. The main problem I have encountered is how long do I have to file my Petition. I am now incarcerated in the Department of Corrections in Canon City, Colorado and the library is a little out of date. We are at least one year behind in our updating of our supplements. The Department has stated that no updating will be done this year as they plan to hire an attorney for the inmates rather than have a library. This will greatly hamper the inmates who are proceeding Pro Se. We have a set of The Supreme Court Digest Lawyer's Edition with the Supreme Rules in Vol. 17? These rules are confusing as to the time limit in which to file a Petition. In the bound Vol. Rule 11 Docketing Cases, it states that I have 90 days in which to file my Notice of Appeal and also my Petition. This same Rule has been changed to Rule 13 in the Supplement but it also states that I have 90 days. The Rule that confuses me on this is Rule 22 in the bound Vol. Review on Certiorari-Time for Petitioning. It states that I have 90 days but this Rule which is Rule 20 in the Supplement states that I only have 60 days. Is this a misprint or something? I have talked to some of the other inmates who study law and they all seem to think it is 90 days.

I did write to the Colorado Supreme Court to ask for assistance but I did not fully explain the situation to them as I had not studied the rules as much at that time. At that time I was working on my Petition for rehearing and I also filed a Motion to Reconsider my Petition for Rehearing. At that thime I requested an advisory counsel in order to assist me in filing my Petition to the United States Supreme Court as I am not knowledgable in the procedures. They appear to be more complicated than the Colorado Supreme Court's. I never have filed a Petition in the Colorado Supreme Court either as I had an attorney at that time. After he left my case he did not give me all the papers and therefore I don't even have a copy of one to copy from. I have filed briefs with the Colorado Supreme Court however and I simply copied the form from my prior attorney's brief. I think I understand how to do everything but I am confused as to what goes into the jurisdictional statement. In reading the Rules it seems that the jurisdictional statement and the petition and brief are similar. Am I allowed to use case law in a jurisdictional statement or the petition. The rules state that these should be brief statements of my arguments. Is this similar to a Motion For New Trial. I have studied this type of motion and no case law is cited in it and the statement is very brief.

In conclusion I would request that you treat this letter as a Motion For a Continuance if in fact the time limit is 60 days instead of 90 days as I will need the extra 30 days to figure everything out. I already have all the information typed out and I could be prepared to file a brief in just a few days but I am not familiar with the jurisdictional statement or the petition. If possible I request this Honorable Court to appoint me advisory counsel for the purpose of assisting me in filing a proper jurisdictional statement and petition. The book we have does not

have any updated forms in it either. The Supplement states that the forms in the bound Volume no longer conform to the Rules but it does not contain any new ones. Therefore I have decided to file my Notice of Appeal using the same form that the Colorado Supreme Court uses. I will send this in this week as it is ready to go but needs to be typed out properly. The United States Supreme Court should receive this soon as I understand that the Colorado Supreme Court sends a copy of this to them as soon as they get it. If the Court does not deem it proper to appoint an advisory counsel to my case I request that the Court supply me with a copy of the current rules and forms so that I can follow. I have been proceeding in Forma Pauperis in the Court below and hope to remain so in this Court. I will file the proper motion for this with my jurisdictional statement. I understand it is necessary with each additional court.

The decision I am appealing is Case No. 80SA517, Decided February 16, 1982 in the Colorado Supreme Court. I filed a timely Petition For Rehearing which was denied March 15, 1982 and the judgment entered March 19, 1982. I understand that the time to Petition For Certiorari to the United States Supreme Court begins to run from the time of dinial of my Petition For Rehearing. Thus if I only have 60 days, my time is almost out. If I have 90 days I would still have time to sort everything out, I think. Thank You for your time. If you request I will file formal motions. I wasn't sure how to do this as the Rules state that some things should be directed to the Circuit Justice rather than the Court itself and therefore I wrote it in letter form. I would also like to know if I should use letter or legal size paper. The Colorado courts now use letter size with single spacing and I hear the Federal courts are going to change also. Is this True?

DATED MAY 5, 1982.

Respectfully Submitted

Richard Velasquez, Pro Se #01756
Montrose, Colorado
P.O. Box 700 Unit 3
Canon City, CO 81212

16-15-102. Ex parte order for wiretapping and eavesdropping. (1) (a) An ex parte order for wiretapping or eavesdropping, or both, as those offenses are described in sections 18-9-302 to 18-9-304, C.R.S. 1973, may be issued by any judge of competent jurisdiction of the state of Colorado upon application of the attorney general or a district attorney, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission of any one of the crimes enumerated in this subsection (1) or that one of said enumerated crimes will be committed:

(I) Murder in the first or second degree as defined in sections 18-3-102 and 18-3-103, C.R.S. 1973;

(II) Kidnapping in the first or second degree as defined in sections 18-3-301 and 18-3-302, C.R.S. 1973;

(III) Gambling, meaning professional gambling, as defined in section 18-10-102 (3), C.R.S. 1973, and subject to prosecution under section 18-10-103 (2), C.R.S. 1973;

(IV) Robbery as defined in section 18-4-301, C.R.S. 1973, aggravated robbery as defined in section 18-4-302, C.R.S. 1973, or burglary in the first or second degree as defined in sections 18-4-202 and 18-4-203, C.R.S. 1973;

(V) Bribery as defined in section 18-8-302, C.R.S. 1973, compensation for past official behavior as defined in section 18-8-303, C.R.S. 1973, attempt to influence a public servant as defined in section 18-8-306, C.R.S. 1973, designation of supplier as defined in section 18-8-307, C.R.S. 1973, or misuse of official information as defined in section 18-8-402, C.R.S. 1973;

(VI) Dealing in narcotic or other dangerous drugs as covered by sections 12-22-322 and 12-22-412, C.R.S. 1973, as such offenses are subject to prosecution as felonies;

(VII) Crimes dangerous to life, limb, or property, meaning extortion, as defined as menacing by use of a deadly weapon in section 18-3-206, C.R.S. 1973, theft by means other than the use of force, threat, or intimidation as defined in section 18-4-401 (5), C.R.S. 1973, arson as defined in sections 18-4-102 to 18-4-105, C.R.S. 1973, as these offenses are subject to prosecution as felonies, assault in the first or second degree as defined in sections 18-3-202 and 18-3-203, C.R.S. 1973; or

(VIII) A criminal conspiracy as defined in section 18-2-201, C.R.S. 1973, to commit any of the aforementioned enumerated crimes.

(b) Anything to the contrary notwithstanding, an ex parte order for wiretapping or eavesdropping may be issued only for a crime specified in this subsection (1) for which a felony penalty is authorized upon conviction.

(2) Each application for wiretapping or eavesdropping, or both, shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) A complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including: Details as to the particular offense that has been, is being, or is about to be committed; a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted; a particular description of the type of communication sought to be

intercepted; the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, there shall be required a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain those results.

(3) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(4) Upon an application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving wiretapping or eavesdropping within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed, or is about to commit a particular offense enumerated in this section;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) There is probable cause for belief that the facilities from which or the place where the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of an offense, or are leased to, listed in the name of, or commonly used by the person alleged to be involved in the commission of the offense.

(5) Each order authorizing or approving wiretapping or eavesdropping shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) The period of time during which an interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication is first obtained.

(6) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection (2) of this section, and the court making the findings required by subsection (4) of this section. The period of the extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted, and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception under this section, and must terminate upon attainment of the authorized objective, or in any event in thirty days. No more than one extension may be granted for any order entered under this section.

(7) If an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such report shall be made at such times as the judge may require.

(8) (a) The contents of any wire or oral communication intercepted by any means authorized by this section shall, if possible, be recorded on tape, wire, or other comparable device. The recording of the contents of any wire or oral communication under this subsection (8) shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order, or extension thereof, the recording shall be made available to the judge issuing the order and sealed under his directions. Custody of the recording shall be wherever the judge orders. A recording shall not be destroyed except upon an order of the judge, and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of this section. The presence of the seal provided for by this subsection (8), or a satisfactory explanation for the absence thereof, is a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived under this section.

(b) Applications made and orders granted under this section shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and shall not be destroyed except on order of the judge to whom presented, and in any event shall be kept for ten years. Information obtained pursuant to a court order authorizing interception of wire or oral communications shall not be used, published, or divulged except in accordance with the provisions of this article.

(c) Any violation of the provisions of this subsection (8) may be punished as contempt of court.

(d) Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval under this section, which application is denied, or after the termination of the period of an order or extensions thereof, the judge to whom the application was presented shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion is in the interest of justice, notice of the following:

(I) The fact of the entry of the order or application;

(II) The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(III) The fact that during the period wire or oral communications were or were not intercepted. The judge, upon the filing of a motion, may, in his discretion, make available to any such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the matter required by this paragraph (d) may be postponed.

(9) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court, unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the information ten days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving this information.

(10) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state of Colorado, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that: The communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the interception was not made in conformity with the order of authorization or approval. This motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion, or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall not be received as evidence.

(11) In addition to any other right to appeal, the state of Colorado has the right to appeal from an order granting a motion to suppress made under subsection (10) of this section, or the denial of an application for an order of approval, if the person making or authorizing the application certifies to the judge granting the motion or denying an application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(12) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that this disclosure is appropriate in the proper performance of the official duties of the officer making or receiving the disclosure.

(13) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use those contents to the extent the use is appropriate in the official performance of his official duties.

(14) Any person who has received, by any means authorized by this section, any information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this section, may disclose the contents of that communication or derivative evidence while giving testimony in any criminal proceeding in any court of this state or in a grand jury proceeding.

(15) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this section shall lose its privileged character.

(16) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized in this section, intercepts wire or oral communications relating to an offense other than one specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (12) and (13) of this section only if an offense other than one specified in the order is an offense which constitutes a felony under Colorado statutes. The contents, and evidence derived therefrom, as authorized by this section, may be used under subsection (14) of this section only when authorized or approved by a judge of competent jurisdiction, when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this section. This application shall be made as soon as practicable.

Source: L. 71, p. 486, § 2; C.R.S. 1963, § 39-24-2; L. 72, pp. 269, 270, §§ 1, 2; L. 75, p. 631, § 3.

I. General Consideration.
II. Application.
III. Order.
IV. Use of Contents and Evidence.
  A. In General.
  B. Of Other Offenses.
V. Suppression of Contents and Evidence.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 16-15-102 is similar to repealed § 40-4-30, C.R.S. 1963, relevant cases construing § 40-4-30 have been included in the annotations to § 16-15-102.

Law review. For note, "Right of Privacy and Emotional Distress in Colorado", see 43 U. Colo. L. Rev. 147 (1971).

Section held constitutional. See People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Section is not an unconstitutional invasion of privacy. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Because the benefits to society from crimes solved or frustrated by the use of wiretapping outweigh the limited invasion. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Problem of electronic surveillance. The reason for the seriousness of the problem arises not from the fact that particular conversations are not specifically described and specifically authorized, but rather from the unmanageability generally of electronic surveillance, for the area is peculiarly sensitive due to its effort to probe the thoughts of man who is the object of the search. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

This section allows law enforcement officers to intercept telephone communications after having obtained judicial authorization upon a showing of probable cause. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Crime within scope of section. Where the crimes for which the defendant is charged (possession, conspiracy to possess, possession for sale, conspiracy to possess narcotic drugs for sale) have a minimum penalty of from 2 to 10 years in the state penitentiary, he falls within the scope of this section. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

II. APPLICATION.

Application showing probable cause required. An ex parte order for wiretapping or eavesdropping may be issued only upon application stating that there is probable cause to believe that evidence may be obtained. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

An interception order may be issued only after a judge of competent jurisdiction has

error and outlining any arguments to be made shall be filed in the district court by the appellant within twenty days after certification of the record. A copy of the appellant's brief shall be served upon the appellee. The appellee may file an answering brief within twenty days after such service. A reply brief may be filed within ten days after service of the answering brief. In the discretion of the district court, the time for filing briefs and answers may be extended.

(f) Stay of Execution. Pending the docketing of the appeal, a stay of execution shall be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof may be required by the county court. Upon a request for stay of execution made any time after the docketing of the appeal, such action may be taken by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts shall remain in effect until after final disposition of the appeal, unless modified by the district court.

(g) Trials de Novo; Penalty Not Increased. If for any reason an adequate record cannot be certified to the district court the case shall be tried de novo in that court. No action on appeal shall result in an increase in penalty.

(h) Judgment; How Enforced. Unless there is further review by the Supreme Court upon writ of certiorari pursuant to the rules of such court, after final disposition of the appeal the judgment on appeal entered by the district court shall be certified to the county court for action as directed by the district court, except in cases tried de novo by the district court or in cases in which the district court modifies the county court judgment, and in such cases, the judgment on appeal shall be that of the district court and so enforceable.

(i) Appeals to Superior Court. In counties in which a superior court has been established, appeals from the county court shall be taken to the superior court rather than the district court. All of the provisions of this section governing appeals from the county court to the district court are applicable when the appeal is taken to the superior court, and the term "district court" as used in this section shall be understood to include the superior court.

Cross references. As to appeals from county court, see also § 16-2-114. As to review of judgments in criminal cases, see also § 16-12-101 et seq.

Am. Jur. See 4 Am. Jur.2d, Appeal and Error, § § 159, 397.

C.J.S. See 24A C.J.S., Criminal Law, § § 1711, 1719.

Finality attaches upon expiration of 30 days. Where judgment and sentence had been entered in the county court, at the expiration of 30 days—no notice of appeal having been filed—it became final. Mills v. People, 181 Colo. 168, 509 P.2d 594 (1973).

And filing of motion for new trial does not automatically extend time. The filing of a motion for a new trial does not have the effect of automatically extending the time to file a notice of appeal as prescribed by this rule. Mills v. People, 181 Colo. 168, 509 P.2d 594 (1973).

Rules 38 to 40. Appeals from the District Court

See Colorado Appellate Rules.

VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 41. Search, Seizure, and Confession

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any judge of a court of record.

(b) **Grounds for Issuance.** A search warrant may be issued under this Rule to search for and seize any property:

(1) Which is stolen or embezzled; or

(2) Which is designed or intended for use as a means of committing a criminal offense; or

(3) Which is or has been used as a means of committing a criminal offense; or

(4) The possession of which is illegal; or

(5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or

(6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) **Application for Search Warrant.** (1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and

(IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(d) **Issuance, Contents, Execution, and Return of Warrant.** (1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(I) To execute and serve the warrant at any time; and

(II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.

(4) **Joinder.**

The search of one or more persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with Rule 41(c)(1)(IV) of these Rules.

(5) **Execution and Return.** (I) Except as otherwise provided in this Rule, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

(II) Any judge issuing a search warrant, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado State Patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (5) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.

(III) When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported, shall be in pursuit thereof and such person, motor vehicle, aircraft, or other object shall cross or enter into another county, such officer is authorized to execute the warrant in such other county.

(IV) It shall be the duty of all peace officers into whose hands any search warrant shall come, to execute the same, in their respective counties or municipalities, and make due return thereof.

(V) A search warrant shall be executed within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) **Motion for Return of Property and to Suppress Evidence.** A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

(1) The property was illegally seized without warrant; or

(2) The warrant is insufficient on its face; or

(3) The property seized is not that described in the warrant; or

(4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(5) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

(f) Return of Papers to Clerk. The judge who has issued a search warrant shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk of the district court for the county of origin. If a case has been filed in the district court after the issuance of the search warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the search warrant has been filed in the district court. When the search warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the search warrant, the documents shall remain in the county court.

(g) Suppression of Confession or Admission. A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

(h) Scope and Definition. This Rule does not modify any statute, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

I. General Consideration.
II. Authority.
III. Grounds.
IV. Application.
V. Issuance, Contents, Execution and Return.
A. Issuance and Contents.
B. Joinder.
C. Execution and Return.
VI. Motion to Suppress.
A. Aggrieved Party May Move.
B. No Warrant.
C. Warrant Insufficient.
D. Property not Described.
E. No Probable Cause for Warrant.
F. Warrant Illegally Executed.
G. Motion; Hearing; Return of Property.
VII. Return of Papers to Clerk.
VIII. Suppression of Confession or Admission.

I. GENERAL CONSIDERATION.

Cross reference. As to constitutional right against unreasonable searches and seizures, see amend. IV, U.S. Const. and § 7 of art. II, Colo. Const.

Am. Jur. See 68 Am. Jur.2d, Searches and Seizures, § § 42, 61, 67, 71, 72, 74, 81, 83, 107, 116.

C.J.S. See 79 C.J.S., Searches and Seizures, § § 70-77, 85-98.

Annotator's note. Cases relevant to Rule 41, Crim. P., decided prior to the adoption of the present Rules of Criminal Procedure in 1974 have been included in the annotations to Rule 41, Crim. P.

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For note, "Search and Seizure Since Mapp", see 36 U. Colo. L. Rev. 391 (1964). For comment on Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963), appearing below, see 36 U. Colo. L. Rev. 435 (1964).

Standard for determining whether search warrant complies with constitutional requirements is one of practical accuracy rather than technical nicety. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

.7. A summons issuing out of this Court in any original action shall be served on the defendant 60 days before the return day set out therein; and if the defendant, on such service, shall not respond by the return day, the plaintiff shall be at liberty to proceed *ex parte*.

.8. Any process against a State issued from the Court in an original action shall be served on the Governor and Attorney General of such State.

(Amended effective Nov. 21, 1980)

CROSS REFERENCES

Fees, see Rule 45.

RESEARCH GUIDE

US Supreme Court Digest:
Supreme Court of the United States §§ 71–80

Am Jur:
32 Am Jur 2d, Federal Practice and Procedure § 225.

Forms:
2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:731, 3:733–3:742.

CASE NOTES

In a suit brought in the United States Supreme Court by the United States against the State of Louisiana to determine rights in lands underlying the Gulf of Mexico, the court, acting pursuant to Rules 9(2) and (6) of its Revised Rules, Rule 21 of the Federal Rules of Civil Procedure, and its equity powers, will grant leave to other states situated on the Gulf to intervene, in view of their possible interests in the subject matter of the suit. United States v Louisiana, 354 US 515, 1 L Ed 2d 1525, 77 S Ct 1373 (1957).

In an original action in the Supreme Court of the United States instituted by the state of Utah against the United States pursuant to a special statute authorizing the Secretary of the Interior to issue quitclaim deed to the state of the Federal Government's interest in the Great Salt Lake, including relicted lands resulting from shrinkage of the lake, and obliging the state to either pay the amount fixed by the Secretary as the fair value of the federal interest or to institute the original action to determine the extent of the federal claim (80 Stat 192, as amended, 80 Stat 349), a private landowner who also asserts a claim to certain of the relicted lands is not entitled to intervene as a party defendant under Rule 19(a) of the Federal Rules of Civil Procedure on the ground that such owner's absence would leave the state subject to incurring double obligations if it should be found liable to the United States for such lands, since (1) under Supreme Court Rule 9(2), the Federal Rules are a guide to the conduct of original actions in the Supreme Court only where their application is appropriate, (2) the original jurisdiction of the Supreme Court should be invoked sparingly, and (3) thus, the state of Utah, which consistently opposed the landowner's motion to intervene, could properly waive the protection of Rule 19. Utah v United States, 394 US 89, 22 L Ed 2d 99, 89 S Ct 761 (1969).

PART IV. JURISDICTION ON APPEAL

Rule 10. Appeal—How Taken—Parties—Cross-Appeal

.1. An appeal to this Court permitted by law shall be taken by filing a notice of appeal in the form, within the time, and at the place prescribed by this Rule, and shall be perfected by docketing the case in this Court as provided in Rule 12.

.2. The notice of appeal shall specify the parties taking the appeal, shall designate the judgment or part thereof appealed from, giving the date of its entry, and shall specify the statute or statutes under which the appeal to this Court is taken. A copy of the notice of appeal shall be served on all parties to the proceeding in the court where the judgment appealed from was issued, in the manner prescribed by Rule 28, and proof of service shall be filed with the notice of appeal.

.3. If the appeal is taken from a federal court, the notice of appeal shall be filed with the clerk of that court. If the appeal is taken from a state court, the notice of appeal shall be filed with the clerk of the court from whose judgment the appeal is taken, and a copy of the notice of appeal shall be filed with the court possessed of the record.

.4. All parties to the proceeding in the court from whose judgment the appeal is being taken shall be deemed parties in this Court, unless the appellant shall notify the Clerk of this Court in writing of appellant's belief that one or more of the parties below has no interest in the outcome of the appeal. A copy of such notice shall be served on all parties to the proceeding below and a party noted as no longer interested my remain a party here by notifying the Clerk, with service on the other parties, that he has an interest in the appeal. All parties other than appellants shall be appellees, but any appellee who supports the position of an appellant shall meet the time schedule for filing papers which is provided for that appellant, except that any response by such appellee to a jurisdictional statement shall be filed within 20 days after receipt of the statement.

.5. The Court may permit an appellee, without filing a cross-appeal, to defend a judgment on any ground that the law and record permit and that would not expand the relief he has been granted.

.6. Parties interested jointly, severally, or otherwise in a judgment may join in an appeal therefrom; or any one or more of them may appeal separately; or any two or more of them may join in an appeal. Where two or more cases that involve identical or closely related questions are appealed from the same court, it will suffice to file a single jurisdictional statement covering all the issues.

.7. An appellee may take a cross-appeal by perfecting an appeal in the normal manner or, without filing a notice of appeal, by docketing the cross-appeal within the time permitted by Rule 12.4.

CROSS REFERENCES

This rule is referred to in Rule 11.

RESEARCH GUIDE

US Supreme Court Digest:

Appeal and Error §§ 851–858, 952–969

Am Jur:

32 Am Jur 2d, Federal Practice and Procedure §§ 269, 300, 326.

Forms:

2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:764–3:767.

2 Am Jur Pl & Pr Forms (Rev), Appeal and Error, Form 132.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2251–2253.

Annotations:

Supreme Court's views as to remedies available in Supreme Court to compel lower court's compliance with Supreme Court's earlier decision in case. 43 L Ed 2d 921.

CASE NOTES

Upon the allowance of an appeal by a judge of a district court, the case is transferred from the district court to the Supreme Court and subsequent steps for dismissal or affirmance are to be taken there. Steps allowed in the district court after the allowance of appeal, such as preparation of the record, extension of time and cost or supersedeas bonds, are for convenience taken in the court possessed of the certified transcript of the record, where it does not appear that the stipulation has received the approval of the court, since adherence to the rule as to the preparation of records is important for the protection of the court whose decision is under review as well as of this Court. DeJonge v Oregon, 299 US 353, 81 L Ed 278, 57 S Ct 255 (1937).

The U.S. Supreme Court does not approve of the practice of substituting a stipulation

of facts, which was made and filed after the decision of the Supreme Court of the State and after the Chief Justice of that court had allowed the appeal and had directed transmission to the U.S. Supreme Court of a record. United Public Workers v Mitchell, 330 US 75, 91 L Ed 754, 67 S Ct 556 (1947).

Under Rule 302(f) of the Supreme Court's Rules, the Supreme Court will not consider an argument not made in the state court below and not reserved in the notice of appeal to the Supreme Court. Head v New Mexico Board of Examiners in Optometry, 374 US 424, 10 L Ed 2d 983, 83 S Ct 1759 (1963).

Rule 11. Appeal, Cross-Appeal—Time for Taking

.1. An appeal to review the judgment of a state court in a criminal case shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the court from whose judgment the appeal is taken within 90 days after the entry of such judgment and the case is docketed within the time provided in Rule 12. See 28 U. S. C. § 2101(d) [28 USCS § 2101(d)].

.2. An appeal in all other cases shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the appropriate court within the time allowed by law for taking such appeal and the case is docketed within the time provided in Rule 12. See 28 U. S. C. §§ 2101 (a), (b), and (c) [28 USCS § 2101(a), (b), and (c)].

.3. The time for filing the notice of appeal runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a petition for rehearing is timely filed by any party in the case, the time for filing the notice of appeal for all parties (whether or not they requested rehearing or joined in the petition for rehearing, or whether or not the petition for rehearing relates to an issue the other parties would raise) runs from the date of the denial of rehearing or the entry of a subsequent judgment.

.4. The time for filing a notice of appeal may not be extended.

.5. A cross-appeal shall be in time if it complies with this Rule or if it is docketed as provided in Rule 12.4.

RESEARCH GUIDE

US Supreme Court Digest:
Appeal and Error §§ 874–889

Am Jur:
32 Am Jur 2d, Federal Practice and Procedure §§ 270, 273.

Forms:
2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:764–3:767.

Rule 12. Docketing Cases

.1. Not more than 90 days after the entry of the judgment appealed from, it shall be the duty of the appellant to docket the case in the manner set forth in paragraph .3 of this Rule, except that in the case of appeals pursuant to 28 U. S. C. §§ 1252 or 1253 [28 USCS §§ 1252 or 1253] the time limit for docketing shall be 60 days from the filing of the notice of appeal. See 28 U. S. C. § 2101 (a) [28 USCS § 2101(a)]. The Clerk will refuse to receive any jurisdictional statement in a case in which the notice of appeal has obviously not been timely filed.

.2. For good cause shown, a Justice of this Court may extend the time for docketing a case for a period not exceeding 60 days. An application for extension of time within which to docket a case must set out the grounds on which the jurisdiction of this Court is invoked, must identify the judgment sought to be reviewed, must have appended a copy of the opinion, must specify the date and place of filing of the notice of appeal and append a copy thereof, and must set forth with specificity the reasons why the granting of an extension of time is thought justified. For the time and manner of presenting such an application, see Rules 29, 42.2, and 43. Such applications are not favored.

.3. Counsel for the appellant shall enter an appearance, pay the docket fee, and file, with proof of service as prescribed by Rule 28, 40 copies of a printed statement as to jurisdiction, which shall comply in all respects with Rule 15. The case then will be placed on the docket. It shall be the duty of counsel for appellant to notify all appellees, on a form supplied by the Clerk, of the date of docketing and of the docket number of the case. Such notice shall be served as required by Rule 28.

.4. Not more than 30 days after receipt of the statement of jurisdiction, counsel for an appellee wishing to cross-appeal shall enter an apperance, pay the docket fee, and file, with proof of service as prescribed by Rule 28, 40 copies of a printed statement as to jurisdiction on cross-appeal, which shall comply in all respects with Rule 15. The cross-appeal will then be placed on the docket. The issues tendered by a timely cross-appeal docketed under this paragraph may be considered by the Court only in connection with a separate and duly perfected appeal over which this Court has jurisdiction without regard to this paragraph. It shall be the duty of counsel for the cross-appellant to notify the cross-appellee on a form supplied by the Clerk of the date of docketing and of the docket number of the cross-appeal. Such notice shall be served as required by Rule 28. A statement of jurisdiction on cross-appeal may not be joined with any other pleading. The Clerk shall not accept any pleadings so joined. The time for filing a cross-appeal may not be extended.

CROSS REFERENCES

This rule is referred to in Rules 10, 11, and 15.

RESEARCH GUIDE

US Supreme Court Digest:

Appeal and Error §§ 1012–1016

Am Jur:

32 Am Jur 2d, Federal Practice and Procedure §§ 269, 270, 276, 277, 278.

Forms:

2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:752, 3:781–3:787, 3:794, 3:795, 3:801, 3:805, 3:807.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2256–2258, 2301.

CASE NOTES

The requirement of the act [28 USC § 380a] providing for the taking of an appeal directly to the Supreme Court of the United States from a district court in a case in which the constitutionality of an act of Congress is brought in question and of a Supreme Court Rule providing that such appeal shall be docketed in the Supreme Court within sixty days from the time it is allowed under such rules as may be prescribed by the proper courts, is not jurisdictional, and such an appeal is therefore within the operation of Supreme Court Rule 14 as to the steps to be taken to procure a dismissal in case of delay in docketing a cause in which an appeal has been taken, and as to extensions of time. United Public Workers v Mitchell, 330 US 75, 91 L Ed 754, 67 S Ct 556 (1947).

An appeal will be dismissed by the Supreme Court of the United States for appellant's failure to comply with the time requirements of Supreme Court Rule 13(1) [predecessor to Rule 12], where the case was not docketed nor the record filed until 20 days after expiration of the 60-day period provided by the Rule, during that period appellant made no application for an enlargement of time nor did any explanation accompany the untimely docketing of the appeal, and only in its reply to appellee's motion to dismiss appellant stated that the delay was occasioned by a misunderstanding between counsel for appellant. Pittsburgh Towing Co. v Mississippi Valley Barge Line Co. 385 US 32, 17 L Ed 2d 31, 87 S Ct 195 (1966).

Appellant's failure to docket an appeal until 56 days after the expiration date of the 60-day period provided by Rule 13(1) [predecessor to Rule 12] is a defect which is not jurisdictional. Johnson v Florida, 391 US 596, 20 L Ed 2d 838, 88 S Ct 1713 (1968).

Rule 13. Certification of the Record.

.1. An appellant at any time prior to action by this Court on the jurisdictional statement, may request the clerk of the court possessed of the record to certify it, or any part of it, and to provide for its transmission to this Court, but the filing of the record in this Court is not required for the docketing of an appeal. If the appellant has not done so, the appellee may request such clerk to certify and transmit the record or any part of it. Thereafter, the Clerk of this Court or any party to the appeal may request that additional parts of the record be certified and transmitted to this Court. Copies of all requests for certification and transmission shall be sent to all parties. Such requests to certify the record prior to action by the Court on the jurisdictional statement, however, shall not be made as a matter of course but only when the record is deemed essential to a proper understanding of the case by this Court.

.2. When requested to certify and transmit the record, or any part of it, the clerk of the court possessed of the record shall number the documents to be certified and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness.

.3. The record may consist of certified copies. But whenever it shall appear necessary or proper, in the opinion of the presiding judge of the court from which the appeal is taken, that original papers of any kind should be inspected in this Court in lieu of copies, the presiding judge may make any rule or order for safekeeping, transporting, and return of the original papers as may seem proper to him. If the record or stipulated portions thereof have been printed for the use of the court below, this printed record plus the proceedings in the court below may be certified as the record unless one of the parties or the Clerk of this Court otherwise requests.

.4. When more than one appeal is taken to this Court from the same judgment, it shall be sufficient to prepare a single record containing all the matter designated by the parties or the Clerk of this Court, without duplication.

CROSS REFERENCES

This rule is referred to in Rule 19.

RESEARCH GUIDE

US Supreme Court Digest:

Appeal and Error §§ 986-1091

Am Jur:

32 Am Jur 2d, Federal Practice and Procedure § 274.

Forms:

2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:772, 3:773, 3:783.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2254, 2255.

Rule 14. Dismissing Appeals

.1. After a notice of appeal has been filed, but before the case has been docketed in this Court, the parties may dismiss the appeal by stipulation filed in the court whose judgment is the subject of the appeal, or that court may dismiss the appeal upon motion and notice by the appellant. For dismissal after the case has been docketed, see Rule 53.

.2. If a notice of appeal has been filed but the case has not been docketed in this Court within the time for docketing, plus any enlargement thereof duly granted, the court whose judgment is the subject of the appeal may dismiss the appeal upon motion of the appellee and notice to the appellant, and may make such order thereon with respect to costs as may be just.

.3. If a notice of appeal has been filed but the case has not been docketed in this Court within the time for docketing, plus any enlargement thereof duly granted, and the court whose judgment is the subject of the appeal has denied for any

reason an appellee's motion to dismiss the appeal, made as provided in the foregoing paragraph, the appellee may have the cause docketed and may seek to have the appeal dismissed in this Court, by producing a certificate, whether in term or vacation, from the clerk of the court whose judgment is the subject of the appeal, establishing the foregoing facts, and by filing a motion to dismiss, which shall conform to Rule 42 and be accompanied by proof of service as prescribed by Rule 28. The clerk's certificate shall be attached to the motion, but it shall not be necessary for the appellee to file the record. In the event that the appeal is thereafter dismissed, the Court may give judgment for costs against the appellant and in favor of appellee. The appellant shall not be entitled to docket the cause after the appeal shall have been dismissed under this paragraph, except by special leave of Court.

CROSS REFERENCES

Special rule for service where constitutionality of law is in issue, see Rule 28.
Motions to the Court, see Rule 42.

RESEARCH GUIDE

US Supreme Court Digest:
Appeal and Error §§ 1234–1235

Am Jur:
32 Am Jur 2d, Federal Practice and Procedure § 329.

Forms:
2 Federal Procedural Forms, Appeal, Certiorari, and Review §§ 3:791–3:797.
15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits §§ 61:2, 61:22.
11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2259–2262.

Rule 15. Jurisdictional Statement

.1. The jurisdictional statement required by Rule 12 shall contain, in the order here indicated:

(a) The questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the jurisdictional statement or fairly included therein will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in this Court contains the names of all such parties. This listing may be done in a footnote. See Rule 28.1.

(c) A table of contents and table of authorities, if required by Rule 33.5.

(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked, showing:

(i) The nature of the proceeding and, if the appeal is from a federal court, the statutory basis for federal jurisdiction.

(ii) The date of the entry of the judgment or decree sought to be reviewed, the date of any order respecting a rehearing, the date the notice of appeal was filed, and the court in which it was filed. In the case of a cross-appeal docketed under Rule 12.4, reliance upon that Rule shall be expresly noted, and the date of receipt of the appellant's jurisdictional statement by the appellee-cross-appellant shall be stated.

(iii) The statutory provision believed to confer jurisdiction of the appeal on this Court, and, if deemed necessary, the cases believed to sustain jurisdiction.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations that the case involves, setting them out verbatim, and giving the appropriate citation therefor. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text then shall be set forth in the appendix referred to in subparagraph 1(j) of this Rule.

(g) A *concise* statement of the case containing the facts material to consideration of the questions presented. The statement of the case shall also specify the stage in the proceedings (both in the court of first instance and in the appellate court) at which the questions sought to be reviewed were raised; the method or manner of raising them; and the way in which they were passed upon by the court.

(h) A statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

(i) If the appeal is from a decree of a district court granting or denying a preliminary injunction, a showing of the matters in which it is contended that the court has abused its discretion by such action. See United States v. Currick, 298 U. S. 435 (1936); Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310 (1940).

(j) An appendix containing, in the following order:

(i) Copies of any opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the court whose decision is sought to be reviewed.

(ii) Copies of any other such opinions, orders, findings of fact, and conclusions of law rendered by courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, of those in companion cases. Each of these documents shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of its entry.

(iii) A copy of the judgment or decree appealed from and any order on rehearing, including in each the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry of the judgment, decree, or order on rehearing.

(iv) A copy of the notice of appeal showing the date it was filed and the name of the court where it was filed.

(v) Any other appended materials.

If what is required by this paragraph to be appended to the statement is voluminous, it may, if more convenient, be separately presented.

.2. The jurisdictional statement shall be produced in conformity with Rule 33. The Clerk shall not accept any jurisdictional statement that does not comply with this Rule and with Rule 33, except that a party proceeding in forma pauperis may proceed in the manner provided in Rule 46.

.3. The jurisdictional statement shall be as short as possible, but may not exceed 30 pages, excluding the subject index, table of authorities, any verbatim quotations required by subparagraph 1(f) of this Rule, and the appendices.

(Amended effective Nov. 21, 1980)

CROSS REFERENCES

Form of documents filed with the Court, see Rule 33.
Briefs on merits in general, see Rule 34.
Time for filing briefs on merits, see Rule 35.
Amicus Curiae briefs, see Rule 36.
Proceedings In Forma Pauperis, see Rule 46.

RESEARCH GUIDE

US Supreme Court Digest:
Appeal and Error §§ 807-819, 1004

Am Jur:

32 Am Jur 2d, Federal Practice and Procedure §§ 278, 300, 303.

Forms:

2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:803–3:807.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2263–2267.

CASE NOTES

The true function of a certificate or statement of a state court by way of amendment of, or addition to, the record, is to aid in the understanding of the record, to clarify it by defining the Federal question with reasonable precision and by showing how the question was raised and decided, so that the Supreme Court upon the record as thus clarified may be able to see that the Federal question was properly raised and was necessarily determined. Honeyman v Hanan, 300 US 14, 81 L Ed 476, 57 S Ct 350 (1937).

Where the record on appeal to the Supreme Court of the United States from a decision of a state court leaves it uncertain whether a Federal question was necessarily passed upon by the state court, the Supreme Court will vacate the judgment and remand the cause to afford an opportunity to amend the record so as to show the nature of the Federal question, how it was raised, and the grounds of its disposition. Honeyman v Hanan, 300 US 14, 81 L Ed 476, 57 S Ct 350 (1937).

The determination by the Supreme Court of the United States that a Federal question was necessarily passed upon by the state court of whose decision review by the Supreme Court of the United States is sought, and whether its decision of that question was necessary to the determination of the cause, must rest upon an examination of the record; and a certificate or statement by the state court that a Federal question has been presented to it and necessarily passed upon is not controlling. Honeyman v Hanan, 300 US 14, 81 L Ed 476, 57 S Ct 350 (1937).

The policy of avoiding a constitutional issue not necessary to a decision has been reflected continuously, not only in decisions, but also in rules of court and in statutes made applicable to jurisdictional matters, including the necessity for reasonable clarity and definiteness, as well as for timeliness, in raising and presenting constitutional questions. Rescue Army v Municipal Ct. 331 US 549, 91 L Ed 1666, 67 S Ct 1409 (1947).

Although the government's jurisdictional statement under Rule 15 raises no question reviewable by the Supreme Court on direct appeal from a District Court's ruling dismissing an indictment, nevertheless where the indictment is valid the appeal will not be dismissed, but the ruling will be set aside and the case remanded for trial. United States v Fruehauf, 365 US 146, 5 L Ed 2d 476, 81 S Ct 547 (1961).

Rule 16. Motion to Dismiss or Affirm—Reply—Supplemental Briefs

.1. Within 30 days after receipt of the jurisdictional statement, unless the time is enlarged by the Court or a Justice thereof, or by the Clerk under the provisions of Rule 29.4, the appellee may file a motion to dismiss, or a motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss, provided that a motion to affirm or dismiss shall not be joined with any other pleading. The Clerk shall not accept any motion so joined.

(a) The Court will receive a motion to dismiss an appeal on the ground that the appeal is not within this Court's jurisdiction, or because not taken in conformity with statute or with these Rules.

(b) The Court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised and was not expressly passed on; or that the judgment rests on an adequate non-federal basis.

(c) The Court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

(d) The Court will receive a motion to dismiss or affirm on any other ground the appellee wishes to present as a reason why the Court should not set the case for argument.

.2. A motion to dismiss or affirm shall comply in all respects with Rules 33 and 42. Forty copies, with proof of service as prescribed by Rule 28, shall be filed with the Clerk. The Clerk shall not accept a motion or brief that does not comply with this Rule and with Rules 33 and 42, except that a party proceeding in forma pauperis may proceed in the manner provided in Rule 46. See Rule 28.1.

.3. A motion to dismiss or affirm shall be as short as possible and may not, either separately or cumulatively, exceed 30 pages, excluding the subject index, table of authorities, any verbatim quotations included in accordance with Rule 34.1(f), and any appendix.

.4. Upon the filing of such motion, or the expiration of the time allowed therefor, or express waiver of the right to file, the jurisdictional statement and the motion, if any, will be distributed by the Clerk to the Court for its consideration. However, if a jurisdictional statement on cross-appeal has been docketed under Rule 12.4, distribution of both it and the jurisdictional statement on appeal will be delayed until the filing of a motion to dismiss or affirm by the cross-appellee, or the expiration of the time allowed therefor, or express waiver of the right to file.

.5. A brief opposing a motion to dismiss or affirm may be filed by any appellant, but distribution of the jurisdictional statement and consideration thereof by this Court will not be delayed pending the filing of any such brief. Such brief shall be as short as possible but may not exceed 10 pages. Forty copies of any such brief, prepared in accordance with Rule 33 and served as prescribed by Rule 28, shall be filed.

.6. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing. A supplemental brief, restricted to such new matter, may not exceed 10 pages. Forty copies of any such brief, prepared in accordance with Rule 33 and served as prescribed by Rule 28, shall be filed.

.7. After consideration of the papers distributed pursuant to this Rule, the Court will enter an appropriate order. The order may be a summary disposition on the merits. If the order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Clerk forthwith shall notify the court below and counsel of record of the noting or postponement. The case then will stand for briefing and oral argument. If the record has not previously been filed, the Clerk of this Court shall request the clerk of the court possessed of the record to certify it and transmit it to this Court.

.8. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and oral argument, shall address the question of jurisdiction.

(Amended effective Nov. 21, 1980)

CROSS REFERENCES

Special rule for service where constitutionality of law is in issue, see Rule 28.
Form of documents filed with Court, see Rule 33.
Motions to the Court, see Rule 42.

RESEARCH GUIDE

US Supreme Court Digest:
Appeal and Error §§ 1191–1247

Am Jur:
32 Am Jur 2d, Federal Practice and Procedure §§ 264, 279, 326, 330.

Forms:
2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:752, 3:811–3:817, 3:972.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2266, 2268.

PART V. JURISDICTION ON WRIT OF CERTIORARI

Rule 17. Considerations Governing Review on Certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

CROSS REFERENCE

Writ of certiorari from Court of Claims, see Court of Claims Rule 154.

RESEARCH GUIDE

US Supreme Court Digest:
Appeal and Error § 910.6

Am Jur:
32 Am Jur 2d, Federal Practice and Procedure §§ 228, 239, 240, 241, 253, 286, 288.

Am Jur Trials:
Defending Antitrust Lawsuits. 24 Am Jur Trials, p.1.

Forms:
2 Fed Proc Forms, Appeal, Certiorari, and Review §§ 3:832, 3:834, 3:861, 3:863, 3:888.

Law Review Articles:
Linzer, The Meaning of Certiorari Denials. 79 Columbia L Rev 1227, November, 1979.

Prettyman, Opposing Certiorari in the United States Supreme Court. 61 Va L Rev 197.

CASE NOTES

The Supreme Court of the United States will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes confined in their operation to the District of Columbia, or which declare the common law of the District, but will review decisions of that court in workmen's compensation cases on questions of importance on account of the national scope of the statute under which they are rendered. Del Vecchio v Bowers, 296 US 280, 80 L Ed 229, 56 S Ct 190 (1935).

Despite the absence of a conflicting decision by the Circuit Court of Appeals of any other circuit, a question is an important one under Rule 19 [predecessor to Rule 17] where attention is called to diverse decisions